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10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF OREGON**

12 In re

13 **Pioneer Village Investments, LLC**, an
Oregon limited liability company,
14 Debtor.
15

Case No. 10-62852-fra11

**PREMIERWEST'S REPLY TO
DEBTOR'S RESPONSE TO MOTION
OF PREMIERWEST BANK FOR
ORDER DETERMINING THAT
DEBTOR'S REAL PROPERTY IS
SINGLE ASSET REAL ESTATE**

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17 PremierWest Bank ("PremierWest") submits the following reply to the Debtor's
18 Response to Motion for Order Determining that Debtor's Real property is Single Asset Real
19 Estate (the "Response").

20 The Debtor asserts that PremierWest's motion should be denied as "premature... because
21 there is no allegation that [monthly interest payments] are not being made, nor that a plan
22 capable of confirmation was not filed." Response, p. 1. However, PremierWest's motion is not
23 premature. PremierWest is entitled to the relief sought.

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1 **A. PremierWest's Motion is not Premature.**

2 A creditor may seek a judicial determination with regard to the applicability of 11 U.S.C.
3 § 101(51B) and 11 U.S.C. § 362(d)(3). This determination may be sought prior to either the
4 Debtor's failure to make required monthly payments, or the Debtor's failure to file a confirmable
5 plan within ninety days after the petition date.

6 Under 11 U.S.C. § 362(d)(3), "the court shall grant relief" from the automatic stay in the
7 event that (1) the debtor fails to make monthly payments or (2) fails to file a confirmable plan
8 within the later of "the 90-day period" or "*30 days after the court determines that the debtor is*
9 *subject to this paragraph.*" 11 U.S.C. § 362(d)(3) (emphasis added). Where a debtor has
10 incorrectly failed to check the "single asset real estate" box on its bankruptcy petition, as is the
11 case here, these time periods will not begin to run until the court "determines that the debtor is
12 subject to [11 U.S.C. § 362(d)(3)]." *Id.*

13 The Debtor failed to identify itself as a "single asset real estate" debtor on its petition.
14 PremierWest is presently entitled to a determination of whether the SARE statutes apply because
15 the Debtor's status under 11 U.S.C. § 101(51B) should have been correctly stated as of the date
16 of the Debtor's petition. Moreover, even if this Court grants PremierWest's motion at the at the
17 July 20, 2010 hearing, the resulting deadline to file a plan or make payments under 11 U.S.C. §
18 363(d)(3)(B) will be August 19, 2010. This deadline will be more than 90 days after the petition
19 date. For the foregoing reasons, PremierWest's motion is not premature, and PremierWest is
20 presently entitled to the relief sought.

21 **B. PremierWest is Presently Entitled to the Protections of 11 U.S.C. § 362(d)(3).**

22 PremierWest is presently entitled to the protections of 11 U.S.C. § 362(d)(3). Currently,
23 the Debtor is not required to file a plan by the SARE statute's deadline. And the only
24 consequence if the Debtor ceases making monthly interest payments is that, under the cash
25 collateral order, PremierWest may seek stay relief, which would not be mandatory. However,
26

1 under § 362(d)(3), “the court *shall grant relief*” in the event that the debtor fails to file a
2 confirmable plan or fails to make monthly payments. 11 U.S.C. § 362(d)(3) (emphasis added).
3 This distinction is of immediate and material benefit to PremierWest, and is one to which
4 PremierWest is entitled under the Bankruptcy Code.

5 In its Response, the Debtor essentially asks that this issue be revisited if and when it
6 ceases making monthly payments under the Cash Collateral Order. However, this would
7 improperly delay the effect of the SARE statutes and, ultimately, the treatment and relief to
8 which PremierWest is entitled.

9 **C. Conclusion**

10 In light of the foregoing, HomeStreet’s motion should be granted.
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12 DATED: July 15, 2010

BALL JANIK LLP

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14 By: /s/ Mathew W. Lauritsen
Brad T. Summers, OSB No. 91111
Mathew W. Lauritsen, OSB No. 083949

15 Attorneys for PremierWest Bank
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CERTIFICATE OF SERVICE

I hereby certify that I served copies of the foregoing **PREMIERWEST'S REPLY TO DEBTOR'S RESPONSE TO MOTION FOR ORDER DETERMINING THAT DEBTOR'S REAL PROPERTY IS SINGLE ASSET REAL ESTATE** on the following parties **by CM/ECF**:

- DAVID W CRISWELL dcriswell@balljanik.com, swylen@balljanik.com
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and on the following parties by **mailing** a full, true and correct copy in a sealed first-class postage prepaid envelope, addressed to the parties listed below, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below:

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DATED: July 15, 2010

/s/ Annette Kimmel
Annette Kimmel, Legal Secretary